

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ZERO-MERCURY-ADDED
ALKALINE BATTERIES, PARTS
THEREOF, AND PRODUCTS
CONTAINING SAME**

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) **Inv. No. 337-TA-493**
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**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION TERMINATING THE INVESTIGATION WITH RESPECT TO TWO
RESPONDENTS ON THE BASIS OF A CONSENT ORDER; ISSUANCE OF CONSENT
ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the joint motion of complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., and respondents FDK Corporation and FDK Energy Co., Inc. to terminate the above-captioned investigation with respect to the two respondents on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3041. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 *Fed. Reg.* 32771 (2003). The complaint as amended alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1-12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2)

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of section 337. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan. *Id.*

The ALJ issued the subject ID (Order No. 41) on December 1, 2003. The ID reconsiders an ID issued by the ALJ on November 6, 2003. That ID terminated the investigation as two respondents, FDK Corporation and FDK Energy Co., Inc, pursuant to a settlement agreement. Complainants and the two respondents had jointly moved for termination pursuant to a settlement agreement which incorporated a consent order.

Complainants filed a motion for reconsideration of the ID of November 6, 2003, asking the ALJ to reconsider his ID and terminate the investigation on the basis of a consent order. On November 21, 2003, the Commission investigative attorney filed a response supporting the motion for reconsideration. On December 1, 2003, the ALJ issued the subject ID, reconsidering the earlier ID and terminating the investigation as to the FDK respondents on the basis of a consent order.

No party petitioned for review of the ID pursuant to 19 C.F.R. § 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 C.F.R. § 210.44. The ID thus became the determination of the Commission pursuant to 19 C.F.R. § 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

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